

United States
COURT OF APPEALS
for the Ninth Circuit

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION (CIO) and
INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, LOCAL 8,
Appellants,
vs.

HAWAIIAN PINEAPPLE COMPANY, LTD.,
a corporation,
Appellee.

HAWAIIAN PINEAPPLE COMPANY, LTD.,
a corporation,
Appellant,
vs.

MARTIN E. ADEN, et al.,
Appellees.

**PETITION OF APPELLANT HAWAIIAN PINEAPPLE
COMPANY, LTD., FOR REHEARING**

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FILE

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*To the HONORABLE WILLIAM HEALY, HOMER
T. BONE and RICHARD H. CHAMBERS, Circuit
Judges of the United States Court of Appeals for the
Ninth Circuit:*

Appellant Hawaiian Pineapple Company, Ltd. (hereinafter "Pineapple") respectfully petitions for a rehear-

ing of the judgment of this Court affirming the exoneration of the individual defendants-appellees Martin E. Aden, et al, on the grounds that:

(1) The Court failed to meet Pineapple's main contentions on this appeal, as set forth in its Specification of Errors 1 and 2 (attached hereto as Appendix A).

(2) The Court erred in its "all-or-none" theory which does not answer Pineapple's contentions.

(3) The Court erred as to the nature of Pineapple's cause of action against the individual defendants and as to the legal bases of the liability of the individual defendants.

The Need for a Rehearing

Perhaps the need for a rehearing is nowhere more clearly mirrored than in the statement of this Court that it found the Pineapple's action against the individual defendants "all very, very confusing" (p. 11).

While we appreciate the Court's absolution that this confusion was not due to the lack of skill of counsel, we believe the circumstances demand that we be permitted to make another presentation before this Court, for to us Pineapple's action against the individual defendants was a straightforward one, which, through error on the part of the trial court, was never properly put before the jury for their verdict.

Since our aggrievement with the trial court, as with this Court, involves the same fundamental point, we shall not fragmentize this petition into compartments.

Instead we propose to make an overall presentation of Pineapple's cause of action against the individuals, pointing out wherein the District Court erred and wherein this Court has not met or answered this error, all of which lead us to but one conclusion — Pineapple was adversely prejudiced by the failure and refusal of the trial court to submit to the jury the issue of, and Pineapple's requested instructions dealing with, the liability of the individual defendants (separate from any conspiracy with the unions) as a result of the riot on the port of The Dalles dock, which issue was raised by pleadings and Pre-Trial Order and supported by the evidence.

The Nature of Pineapple's Action against the Individual Defendants

This Court states in its opinion that:

“As we see it, the gravamen of Pineapple's complaint as submitted to the jury on the individuals was that they violated Section 303 of the Labor-Management Relations Act” (p. 12).

To view Pineapple's cause of action against the individuals in this vein reflects an erroneous notion of Pineapple's action. Generally, Pineapple's lawsuit was brought to recover damages to its business and its property which it sustained by reason of the activities of the two unions and the individual defendants. Specifically, plaintiff proceeded against the two unions on the grounds that their activities constituted a violation of the Labor-Management Relations Act; and Pineapple proceeded against the individual defendants on the basis that the individual defendants and the two unions had committed various

unlawful acts (including the physical invasion and riot on the dock) pursuant to a conspiracy to injure Pineapple's business and property¹.

Accordingly, in its action Pineapple predicated the liability of the individual defendants upon the legal basis that they had engaged in various unlawful activities, pursuant to an alleged conspiracy with the unions to injure Pineapple's business. The individual defendants could therefore be liable in two ways: they and the unions were part of an unlawful conspiracy to injure Pineapple's business and property; or the individual defendants had engaged in unlawful acts, the principal one being the unlawful invasion of the dock and the destruction of Pineapple's property and injury to its employees. If the conspiracy charge was not proved, Pineapple was still entitled (as conceded by the individuals on page 3 of their supplemental brief) to recover for the damages it sustained as a result of the unlawful acts of the individual defendants.

¹Witness the first requested instruction which Pineapple submitted to the trial court:

"The plaintiff, Hawaiian Pineapple Company, Ltd., is seeking to recover damages from the defendant International, from the defendant Local 8, and from the various individual defendants upon different grounds. On one ground, the plaintiff is proceeding against the defendant International and the defendant Local 8 on the basis that these two unions have violated the Labor-Management Relations Act of 1947. On another ground, the plaintiff is proceeding against the various individual defendants and also the defendant International and the defendant Local 8 on the basis that all of these defendants have committed various allegedly unlawful acts pursuant to a conspiracy among themselves as a result of which the plaintiff claims to have been injured in its business and property." (Tr. 123.)

We call the Court's attention to the statements of Pineapple's counsel when he advised the trial court that "... If we are to recover on this conspiracy against the individuals, it has to be on one of two theories: Either that it was all due *to their participation in a riot*, or a conspiracy in which they participated with others to do damage to our business" (Tr. 926). In other words, one of the two bases on which Pineapple sought to establish liability on the individual defendants was for their joint responsibility for participating in the riot and the damages that were done therein and flowed therefrom².

We can readily understand how one, who had not participated in the pre-trial proceedings and was first reading the contentions of the Pre-Trial Order, would conclude that Pineapple was only proceeding against the individual defendants for a violation of Section 303 of the Labor-Management Relations Act. One of the principal charging paragraphs in the Pre-Trial Order is cast in terms of the many statutory elements necessary to bring a Section 303 damage suit under the Act. A study of the pre-trial proceedings, however, shows the reason for this.

As noted above, Pineapple was proceeding against the unions for violating Section 303 of the Act, besides proceeding against the individuals and unions for unlawful acts under the common law. Since the trial court took the view there was only one series of damages involved,

²See also Pineapple's Pre-trial contention 6 (d) (Tr. 58-59); Pre-trial issues No. 8, 9, 10, 11, 16 (Tr. 67); and Pineapple's requested instructions set out in Appendix A hereto.

the trial court directed that in the preparation of the Pre-Trial Order that Pineapple's theories as to the liability of the unions and the individuals be amalgamated or consolidated in one contention (Tr. 295, 299). Necessarily, the amalgamated result looks on the surface mostly like a Section 303 violation charge, since it requires so many different factual elements to charge a violation of this section. However, the form of the Pre-Trial Order should not allow this Court to lose sight of the fact that Pineapple specifically sought to establish liability on the individual defendants for their participation in the riot and the ensuing damages.

In line with its alternative theory as to the liability of the individual defendants, Pineapple submitted at least three specific instructions to the trial court dealing with the riot and the liability of the individual defendants therefor. These instructions are set out in Appendix A attached hereto and the failure to give them was assigned as Specification of Error 2 on this appeal.

Pineapple was entitled to have these instructions submitted to the jury because the evidence was undisputed that at least 60 of the individual defendants had participated in the riot on the dock and all of the other individual defendants, except one, were at or near the dock on the day of the riot. Moreover, as will be developed hereafter in more detail, the damages sustained by Pineapple were such that it contended they all flowed and resulted from the riot; and the proof was such that a factual issue was posed for the jury to determine the damages which were the proximate result of the riot.

Pineapple's Specification of Errors

The trial court did two completely unexpected things in its instructions on the liability of the individual defendants: the one in what it did instruct and the other in what it failed to instruct or even submit to the jury.

First, the trial court (to the surprise of all parties, no such instructions having been previously submitted or discussed) instructed the jury that an individual defendant could only be found liable (1) *if* one or both unions was found liable under the Act (Tr. 1435-1440); (2) *and if* the individual was a member of a "conspiracy" between either or both of the unions and the individual defendants (Tr. 1436-1437, 1448-1450); (3) *and if* the "conspiracy" involved was one (a) to restrain trade and commerce between Hawaii and any state *and* (b) to violate (in effect) the provisions of Section 303 (A) (1) of the Act.

This Court has agreed with Pineapple's objection that the trial court erred in instructing that an individual could not be found liable unless the unions were first found liable; but has gone on to hold that the jury finding of liability against the unions in effect cured this error³.

³Had the trial court's instructions been confined solely to tying together the liability of the unions and the individuals, we might agree that the trial court's erroneous instruction had been cured by the verdict. We fail to see how this Court can claim such a "cure" in view of the trial court's further instructions that the liability of an individual was dependent on his having entered into a conspiracy with either or both unions to restrain trade between Hawaii

We ask this Court, however, to note that Pineapple's exceptions⁴ went further than objecting to union liability as a prerequisite to individual liability and, together with Pineapple's other exceptions, put the Court on fair notice of Pineapple's cause of action against the individuals for damages flowing from "to just physically stop a business operation in connection with the riot and other activities they engaged in."

The second unexpected action of the trial court was that it failed to submit to the jury the issue of the liability of the individuals, separate and apart from any conspiracy with the unions, and refused to give any instructions whatsoever along the lines requested by Pine-

and any state and to (in effect) violate Section 303 (A) (1) of the Act. As we pointed out in our Opening Brief (pp. 52-55) we know of no basis in law, under the issues of this case, for these further instructions. This Court has remained silent on this point, yet it was just as erroneous for the trial court to require that the individuals be co-conspirators of a specified conspiracy with the unions as it was for the trial court to instruct that the liability of the union was a prerequisite to individual liability. A verdict holding the unions liable does not cure erroneous instructions as to the nature or elements of a charged conspiracy between the unions and the individuals.

⁴"Then the Plaintiff Hawaiian Pineapple Company will take an exception to the instruction that there can be no verdict against the individuals in that case unless the unions are also found liable, because there is a cause of action stated against them that was broader than a conspiracy to restrain trade, and that is to just physically stop a business operation in connection with the riot and other activities that they engaged in. That was one of the counts under the original complaint, and it seems to me that they could bring in a verdict in the Hawaiian Pineapple Company case even though they did not bring one against the unions." (Tr. 1450).

apple (set out in Appendix A attached hereto) as to the liability of the defendants for their unlawful invasion of the dock.

Thus, the legal liability of an individual defendant in this case was submitted to the jury *solely* on the basis of whether he was a conspirator with either or both unions to restrain trade between Hawaii and any state and to violate the prohibitions of Section 303 (A) (1) of the Act. This was improper, as Pineapple pointed out⁵, again putting the trial court on fair notice that Pineapple was entitled to recover against the individual defendants for their unlawful activities.

**This Court's "all-or-none"
Theory is no Answer**

It is difficult to determine the ground or grounds on which this Court has affirmed the verdict exonerating the individual defendants.

The central theme of this Court's opinion appears to be that Pineapple tried its case against the individual defendants on an "all-or-nothing" basis of getting the same total set of damages from the individual defendants as from the two unions; and the verdict in favor of the

⁵"Then my second point is the failure to instruct in the Hawaiian Pineapple Company case that the plaintiff could recover against the individuals and/or unions on a theory other than the Taft-Hartley Act, because there was a diversity of citizenship and they engaged in physical activities that prevented us from carrying on our business which they were in no event, under any theory of labor dispute or anything else, entitled to engage in. We would be entitled to recover on that theory if there were no Taft-Hartley action involved here." (Tr. 1450-1451).

individuals meant that the jury decided Pineapple was not entitled to the same damages against the individual defendants as it was entitled to against the union. In a nutshell, this Court's notion seems to be that by stating an oral preference for a form of verdict in which only one amount of damages could be inserted by the jury as against the unions and the individual defendants found liable, Pineapple placed itself in a "strait-jacket" as to damages⁶.

This Court's opinion does not answer Pineapple's position on this appeal. Whether or not Pineapple, willingly or through the action of the trial court, was placed in what this Court calls a "strait-jacket" as to damages, the

⁶This Court's decision appears to stem from the following statements in its opinion:

P. 9 — "We must keep in mind that the trial court held the plaintiff to an all-or-nothing recovery against the individuals and required as a condition of their liability that a union first be found liable."

P. 10 — "In such an event the strait-jacket as to damages — the same amount against the individuals as against International or Local — would have justified the jury in returning a verdict in favor of the individuals."

P. 10 — "... but still under the no-liability theory for less than all acquiesced in by plaintiff, it affords no basis to attack the verdict because we know that certain individuals were necessarily liable for a fraction of the total damage."

P. 12 — "... distilling the case down, we think that Pineapple did in the end project its case for liability on the basis of a common sum against all, that is, as against all defendants found responsible."

P. 13 — "... when counsel for Pineapple said, in discussing the form of the verdict, the following: ... at that point the trial court was entitled to put Pineapple on an all-or-nothing basis for the same amount as to each defendant found liable."

P. 14 — "... Pineapple did not focus on the damage at the dock, but let the case go on an all-or-nothing basis."

uncontraverted fact remains that *there was never presented to the jury* for its determination Pineapple's contentions that the damages which it sustained in this case flowed from the riot and the resulting consequences and that the individual defendants who participated in the physical invasion of the dock and the riot were jointly liable for the damages proximately resulting therefrom.

The flaw in this Court's reasoning, as we see it, is its assumption that there was a significant difference between the total damage for which the unions were held liable and the total damage for which the individual defendants could have been held jointly liable. We know of no basis for any such assumption in the record. The proof was such that every item of damage that might be said to be included in the verdict obtained against the unions certainly raised a question of fact for determination by the jury as to whether it was also the proximate result of the activities of the individual defendants in staging, and as an aftermath of, their riot.

The items of damage for which Pineapple is seeking recovery are set out in the Pre-Trial Order (Tr. 61-63) and were supported by extensive testimony in the record (Tr. 486, 686, 916, 918-919, 935-949, 956, 958, 988-996, 1038, 1040, 1048, 1051-1052, 1056-1057, 1060, 1061, 1066-1067).

Admittedly, there can be no dispute that the damage directly done in the riot was the proximate result of the participating individual defendants: truck repairs (Tr. 1038); crane repairs (Tr. 1040); lost cases of pineapple (Tr. 918-919, 1048); cut mooring lines and destroyed

gangway (Tr. 1061, 1062); medical and hospital expenses for injured employees (Tr. 1066-1067). Next, there were the consequential damages sustained at The Dalles, which Pineapple contended were the proximate result of the riot: charter hire of the ocean-going tug ONO and the barge YFN while they were forced to be idle (Tr. 1051-1052, 1061), special police costs (Tr. 1060), expenses of Pineapple's employees (Tr. 1058), additional freight costs of having to truck cargo to Portland (Tr. 1067). Many other items of damages at The Dalles were excluded by the trial court, but such as were admitted in evidence were viewed as "direct" losses and warranted jury determination.

Finally, there were the consequential damages at Pineapple's plant at San Jose, California, which consisted of the additional expense to which Pineapple was put by reason of not being able to obtain the pineapple in time to directly can fruit cocktail. It will be recalled that the riot put Pineapple's crane for unloading from the barge out of commission for about ten days after the riot (Tr. 1040). Pineapple's plant had previously purchased large quantities of perishable fruits to be mixed with cherries and with pineapple from the barge in the preparation of canning of fruit cocktail. To prevent the spoilage of these fresh fruits while awaiting the arrival of the pineapple on the barge, Pineapple's plant was forced to process and can them into a mixture known as "fruit mix". By the time the crane was once again in operation, the San Jose plant had been forced to process and can all of the fresh fruit.

Since it would have been possible to hold off the canning of the fresh fruit from September 26 until September 29, the day when the pineapple would have arrived at the San Jose plant had it not been for the riot on September 28th, Pineapple's position before the jury was that all of the additional expenses which it incurred by reason of having to convert the fresh fruit into fruit mix and thereafter to re-process it into fruit cocktail upon the eventual receipt of the pineapple, could be attributed to the failure to receive the pineapple as a result of the riot. In other words, Pineapple's position was that this was a question of fact to be passed upon by the jury as to whether or not this item of damage was a proximate result of the riotous activities of the individual defendants.

It is, of course, possible to fly-speck a few small items of damage which *might* be said to be attributable to the unions but not to the aftermath of the riot of the participating individual defendants⁷. We cannot conceive this Court would choose to rely on any such differences as justification for holding that Pineapple was *not* entitled to have submitted to the jury the total harm perpetrated by the individual defendants as the result of the riot, which total harm was substantially, if not identical, with the total harm effected by the unions.

⁷For example, e.g., the charter hire of the tug ONO and the barge YFN for September 26 and September 27 or the cost of special police on these two days.

Failure to Meet Pineapple's Specification of Errors

After the jury returned its verdict in favor of the individual defendants, Pineapple moved for a partial new trial on the same grounds which have been raised in this appeal (Tr. 142-145). In denying this motion, the trial court neither stated Pineapple's contentions, as they were submitted in its motion, nor answered these contentions⁸.

Once again in this appeal Pineapple in its specification of errors presented the same contentions which were presented in its motion for a partial new trial. Once again, we respectfully submit that Pineapple's contentions have not been stated, as raised by Pineapple⁹, nor have these contentions been answered.

⁸The only reference to Pineapple's motion for a partial new trial in the twenty-eight-page opinion by the trial court was as follows:

"Before dealing with defenses, it is well at this point to dispose of plaintiff Pineapple's motion for new trial upon the ground that the individual defendants could have been held upon the same ground and the same evidence as were the unions. Pineapple here repeats the same error as was made by the unions in contending that the verdicts were inconsistent.

"It is true that the Court may not have accurately stated the elements of liability at common law as to the individuals. But no exceptions were taken to the instructions upon this ground. The subject is highly complicated and the question of whether the state law or a common law adopted by the federal enactments applies is extremely nebulous. Certainly, the ground chosen by Pineapple for objection and exception cannot be maintained. The jury found against Pineapple on a fair statement of the common law. This motion for new trial is therefore denied." (Tr. 165.)

⁹So this Court states: "... although complaint is made by Pineapple that the jury was not permitted to consider the liability

When this Court states that Pineapple “did not focus on the damage at the dock, but let the case go on an all-or-nothing basis”, it is not dealing fairly with Pineapple. If there was one aspect of the case on which Pineapple focused above everything else (and on this we guarantee that opposing counsel will agree), it was the physical invasion of and the riot on the dock and the ensuing and resulting damage to Pineapple.

If there was any letting “the case go on an all-or-nothing basis”, it was that the participating¹⁰ individual defendants were liable for the common sum or total set of damages involved on the basis of (1) the conspiracy with the unions to injure Pineapple’s business or (2) the riot and consequential damage therefrom. Regardless of whether or not the conspiracy basis for the liability of the individual defendants was proven, Pineapple was still entitled by reason of its pleadings, proof, and requested instructions, to have the alternative basis for the liability of the individual defendants submitted to the jury. This the trial court failed and refused to do.

of all individuals for a common sum different from the sum of liability found as against International and Local” (p. 9), Pineapple is not complaining of this point but of the fact that the jury was never permitted to pass upon the common sum liability of the individual defendants found to have participated in the riot and the damages proximately resulting therefrom.

¹⁰The verdict form required the jury to strike out the name of any defendant against whom the jury did not intend to return a verdict. (Tr. 141.)

CONCLUSION

This Court has acknowledged the injustice of this case insofar as one or more of the union officers and agents escaped individual liability (p. 14). The injustice runs deeper than this, for under the jury's verdict in this case at least 60 individual defendants who jointly participated in the riot against Pineapple have been allowed to escape liability for their unlawful acts.

We submit that the unjust verdict exonerating the individuals resulted from the failure of the trial court to allow the jury to separately pass upon the joint liability of the individual defendants for their riotous activities and was further due to errors committed by the trial court in the actual instructions it gave to the jury with respect to the liability of the appellees, all of which errors (except the tying together of the liability of the unions and individuals) have not been met by this Court.

Accordingly, we respectfully submit that this Court should grant our petition for a rehearing to consider and decide Pineapple's specification of errors in this cause, which have never been directly met or answered.

Respectfully submitted,

KRAUSE, EVANS & LINDSAY
GUNTHER F. KRAUSE
DENNIS LINDSAY

Attorneys for Appellant and
Petitioner

CERTIFICATE OF COUNSEL

IT IS HEREBY CERTIFIED that in the judgment of the undersigned, the foregoing petition for a rehearing is well-founded, and is not interposed for delay.

Dated, Portland, Oregon,
December 22, 1955.

DENNIS LINDSAY,
Of Counsel for Appellant and
Petitioner

APPENDIX A

SPECIFICATION OF ERRORS

(Assigned on Appeal)

1. The District Court erred in failing to submit to the jury the issue of the common law liability of the individual appellees to Hapco as a result of their unlawful activities, separate and apart from any issues of their liability as co-conspirators with International and Local 8.

2. The District Court erred in refusing to give to the jury the following instructions requested by Hapco:

“If you find from a preponderance of the evidence that certain individual defendants on or about September 28, 1949, in a riotous and tumultuous manner entered upon the dock of the Port of The Dalles and thereby placed in fear the employess of the plaintiff or of the Port of The Dalles, or of any other employers who were engaged in business with the plaintiff with an object of intimidating said employees and inducing them to refuse to perform their services for the plaintiff and other employers, and you further find that plaintiff sustained damages as a proximate result of such activities of the defendants, then your verdict should be for the plaintiff and against such defendants who participated, in such amount as will reasonably compensate it for the damage to its business and property.” (Tr. 130)

* * *

“If you find from the preponderance of the evidence that on September 28, 1949, at about the hour of 2:00 p.m. certain individual defendants entered upon the dock of the Port of The Dalles and there in a loud, riotous and tumultuous manner assaulted certain employees of the plaintiff and damaged property and cargo belonging to the plaintiff and resisted the

police officers of the City of The Dalles, all of the individual defendants who participated in the raid upon the dock are liable for all of the injuries and damages inflicted by any of the rioters if any such damages or injuries were inflicted." (Tr. 130-131)

* * *

"In the assessment of damages against the various defendants, you should consider the date as of which the defendant or defendants commenced the activities herein complained of, bearing in mind plaintiff's claim that its damages were sustained during a period commencing September 26, 1949. Accordingly, if you find from a preponderance of the evidence that each of the defendants, as a result of a conspiracy, engaged in the activities herein complained of and that plaintiff's losses, if any, commenced as of September 28, 1949, then each of the defendants would be liable for all of the damages, if any, sustained on and after that date regardless of whether he or they participated in the unlawful activities subsequent to that date. On the other hand, if you find from a preponderance of the evidence that there was no conspiracy, then the defendants may only be held liable for such damages, if any, that plaintiff sustained as a result of the activities of such defendant or defendants, bearing in mind the instruction which I have given you as to responsibility for the damages resulting from the riot, if any.

"I further instruct you that the plaintiff Hawaiian Pineapple Company can make only one recovery of the damages, if any, awarded to it in this action, and that if you should find for the plaintiff against some of the defendants in one sum and against others of the defendants for another sum, the plaintiff would be only entitled to recover the larger sum awarded, and is not entitled to recover the total of the different sums awarded." (Tr. 133-134)

Hapco objected to the refusal of the District Court to give instructions that it was entitled to recover against the individual appellees, even if the Labor-Management Relations Act, 1947, was not involved in the action, because of the wrongful physical activities engaged in by the individual appellees in preventing Hapco from carrying on its business operations (Tr. 1450-1451).

3. The District Court erred in giving the following instructions to the jury:

"Now, I want to mark that point. If you find under these instructions that I have just given you that neither of these unions is liable, neither the International nor the local, then you shall promptly enter a verdict in favor of all the defendants and against the plaintiff. That includes the individuals and everyone else. Now if you have, however, found liability under these instructions as to one or both unions, the International and local, then you may consider the liability of the individual defendants. In other words, you have to find the unions or one of them liable under the first part of the instructions before you can consider any individuals." (Tr. 1435)

* * *

"If you find from the evidence, that the individual defendants, [1726] among themselves or together with the Defendants International and Local 8, or either of the unions, conspired together to restrain trade and commerce between the Territory of Hawaii and any state of the United States, and to encourage or induce the employees of any employer by concerted action in the course of their employment to refuse to transport, handle or work upon a cargo of pineapple at The Dalles, Oregon, or to perform any services in connection therewith, with the object of forcing any employer or other person to cease doing business with any other person,

and with the purpose of doing injury to the business or property of the plaintiff, and that said damage to business or property was actually accomplished, then plaintiff is entitled to recover against any individuals who, knowing of the unlawful intent, did any act in furtherance thereof and reasonably calculated to effect the object of the conspiracy." (Tr. 1436-1437)

* * *

"If you find there was no conspiracy involving any individual defendants, then your deliberations will be confined to the defendant unions alone in accordance with the [1728] previous instructions. If as to any individual defendant you find he was not a member of such conspiracy or did no act in furtherance of any conspiracy, knowing of the common design and with the purpose of aiding and abetting the common object, then you should find in favor of that defendant." (Tr. 1438-1439)

* * *

"If you find that the International, acting through its agents or officers, in the course of their employment, or through Local 8 and Local 8 itself, through its officers and [1729] agents or members, in the course of their employment, induced or encouraged employes of any employer to engage in a concerted refusal in the course of their employment to transport or otherwise handle any goods, articles or commodities, or otherwise handle, work on or perform services in connection with any goods, if one of the objects of the inducement and encouragement was to force or require any person to cease doing business with any other person, and as a direct result plaintiff was injured in business or property, then you may find liability against both the union defendants.

If you find only one is so liable, then you will find liability against such defendant.

If you do not so find, you will return a verdict for all defendants and against the plaintiff.

But if you find one of the defendant unions liable, or both of the defendant unions liable, and if on further consideration you find that the defendant union or unions against whom you have found liability further entered into a conspiracy, as above described, with the individual defendants, you will add to the verdict the names of all the individual defendants against whom you find." (Tr. 1439-1440).

Hapco objected to these instructions to the effect that there could be no verdict against the individual appellees unless the unions were also found liable, on the ground that the cause of action against the individual appellees was broader than a conspiracy to restrain trade and was directed against and included the riot and the other activities the individual appellees engaged in to physically stop Hapco's business operations (Tr. 1450).

